

IN THE HIGH COURT OF TANZANIA

AT MWANZA

MISC. LAND APPLICATION NO. 91 OF 2018

(Arising from Land Appeal No .9 of 2015, High Court at Mwanza)

NYAMBOGA MAGEMBE.....APPLICANT

VERSUS

JEREMIAH NZENGA & 6 OTHERS.....RESPONDENTS

RULING

05/12/2018 & 25/01/2019

Gwae, J

Before me is an application for extension of time to file an application for review of this court judgment (**Makaramba, J**) dated **8th December 2018** dismissing the applicant's appeal in its entirety. This application is brought under section 14 (1) of the Law of Limitation Act, Cap 89 Revised Edition, 2002.

Initially; the applicant unsuccessfully filed a land dispute in the District Land and Housing Tribunal at Geita vide Application No. 4 of 2014 claiming her 39 acres to be encroached by the respondent. It was the opinion of the tribunal that the case was barred with limitation of time

pursuant to item 22 of Part I to the LAW OF Limitation Act, Cap 89, R. E 2002.

The intended review is essentially based on the difference of acres allegedly owned by the respondents (16 acres) and those 39 acres claimed to have customarily been owned by the applicant and her late husband, **Masokomya Milengo** however her efforts to have the judgment of the court reviewed was barred by limitation of time, hence this application for an enlargement of time to file an application for review of this court judgment out of time.

One of the reasons advanced by the applicant through his affidavit supporting this application is that she waited for enforcement of the decree of the trial tribunal so that the area in dispute would be demarcated but in vain and she then felt sick, she was incapacitated by sickness as she could not move and speak.

The respondents had seriously resisted this application through their joint affidavit that the applicant had no conclusive proof that her parcel of land was measuring 39 acres and that the assertion that the delay for filing

the intended application for review was pertained by sickness is false for wanting of medical documents or an affidavit of a doctor.

Before this court, the applicant was represented by **Mr. Ringia**, the learned advocate while the respondents appeared in person. Mr. Ringia merely prayed for consideration of the applicant's affidavit while the respondent stated that reasons given for delay are not legally founded.

Upon looking at the provision of the law cited by the applicant in moving the court and the parties' affidavits, I unhesitatingly find that the centre of the dispute and issue for determination is whether the applicant has given sufficient and good cause for the sought extension of time to enable him to file an application for review out of time. The applicant filed this application on the **5th May 2018** while the judgment subject of the intended review was delivered by this court on the **8th day of December 2017**, thus more than 80 days of delay which ought to be reasonably accounted for by the applicant.

The applicant has merely averred that she was sick to the extent that she could not move and speak but she has absolutely failed to support her assertion with any documentary evidence to support her assertion. I am

sound of the principle that illness may, in ordinary circumstances, constitute good cause, hence may justify a court of law to justly and fairly exercise its discretion in granting extension of time however there must be proof by a party alleging to have been sick after the elapse of the time prescribed period.

It is my considered opinion therefore that courts of law should always avoid relying and acting upon mere assertions but to cogent evidence of asserted illness. My holding is judicially guided by the decision of the Court of Appeal in **Shembilu Shefaya v. Omary Ally** (1992) TLR 245 where it was authoritatively held and I quote;

“Even at the hearing he merely insisted that the disease he had was not one for hospital treatment and that the local doctors could not be available to bear witness to that fact. Now, that, as properly pointed out by the respondent in his counter-affidavit, could be alleged by anybody with impunity. For court work we need something more than excuses”.

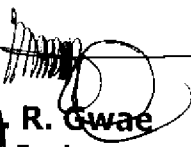
In our present application, it is clear that neither a medical chit was attached in the applicant’s affidavit nor did any medical practitioner who attended his alleged illness appear before the trial court and establish this crucial fact. I have also considered if there is a serious and reviewable

matter in terms of the decision of this court (**Makaramba**, J) and apprehended none.

In the final event, this application for review is not grantable for want of sufficient cause for delay; the same is dismissed with no order as to costs.

Order accordingly.




R. Gwae
Judge
/01/2019